

**REMARKS**

This Amendment is being submitted in response and further to:

- 1) the Office Action dated March 5, 2008, entering final rejections of previously pending claims and withdrawing from consideration newly presented claims;
- 2) several subsequent phone discussions between Applicant's undersigned attorney and Examiner Yoo resulting in Examiner Yoo advising Applicant's undersigned attorney to submit an Applicant Initiated Interview Request Form setting forth points for discussion in the interview;
- 3) the April 22, 2008 submission to Examiner Yoo of an Applicant Initiated Interview Request Form with an unsigned Proposed Response to Office Action setting forth arguments in support of removing the finality of the rejection based on prior art not of record, traversing the anticipation rejection of pending claims, and removing the restriction requirement of the newly presented claims;
- 4) the subsequent telephone call to Examiner Yoo on May 6, 2008 in which Applicant's undersigned attorney was informed that the April 22, 2008 submission was entered as an Amendment After Final, and because of his time deadline to respond, no interview could be granted;
- 5) the Office Action dated May 9, 2008, withdrawing the restriction requirement of the March 5, 2008 Office Action and entering final rejections of all pending claims;
- 6) the subsequent telephone call to Examiner Yoo on May 29, 2008 in which Applicant's undersigned attorney was directed to submit another Applicant Initiated Interview Request Form setting forth points for discussion in the interview;
- 7) the May 29, 2008 submission to Examiner Yoo of an Applicant Initiated Interview Request Form setting forth arguments in support of traversing the rejection of pending claims and requesting clarification of the status of the application based on procedural issues related to entry of an interview request as an unsigned amendment and the subsequent Office Action that issued;

- 8) the subsequent telephone call from Examiner Yoo denying the interview request and stating that the application was under Final Rejection based on the May 9, 2008 Office Action responding to the unsigned entry of April 22.;
- 9) the subsequent inquiry to Supervisory Primary Examiner (SPE) Xuan Thai regarding the entry of the April 22 resulting in removal of the submission as an Amendment After Final;
- 10) the Office Action dated June 9, 2008, including a Corrective Notice to indicate the May 9, 2008 Office Action is responsive to Applicant's November 23, 2007 response to a non-final Office Action;
- 11) the telephone call between Applicant's undersigned attorney and Primary Examiner Corbett Coburn briefly discussing the claim rejections, and Examiner Coburn indicating that the submission of an Applicant Initiated Interview Request would more likely result in an interview if it were accompanied by claim amendments, and that merely setting forth arguments to traverse the claim rejections should be presented in a Request for Reconsideration;
- 12) the July 3, 2008 submission of an Applicant Initiated Interview Request accompanied with proposed claim amendments and remarks explaining why Applicant's undersigned attorney believed the claims were allowable (although Examiner Yoo seemed willing to schedule the interview, it was not possible prior to the two month deadline for filing an Amendment After Final);
- 13) the July 9, 2008 submission of a Proposed Amendment After Final Rejection;
- 14) the July 28, 2008 Advisory Action indicating that further consideration was required for some claims and maintaining the final rejection for the rest of the pending claims;

The application includes independent claims 21, 23, 25, 26, 33, and 37. Claims 3-6, 12, and 18-20 depend from claim 21; Claims 27 -32 depend from claim 26; claims 34 - 36 depend from claim 33; and claim 38 depends from claim 37. The Examiner has rejected the previously presented claims (except the newly presented claims 37 and 38) under 35 USC 102(b) and 103(a) citing Descalzi, US Pat. No. 6,148,242. Addressing the rejections of the claims, Applicant herein amends independent claims 21, 23, and 25, so as to be patentably distinguishable over the cited prior art.

Turning to amended claim 21, that claim is directed to a system for real-time tracking and recording events of a sports contest with a primary object of play. The sports contest includes offensive and defensive competitive interaction between at least a first team and a second team in opposition therewith. The system includes at least one computer including a processor portion, and a user interface portion. The computer is interactively operable with a user under control of a computer program associated with the processor portion thereof. The system further requires a computerized database accessible through the computer program with the database including information therein indicative of recorded events of the sports contest. The computer program includes a game module for controlling entry of information by the user during the sports contest, and the game module is operable to interpret the information regarding sports contest activities selectably entered by the user. The computer is programmed for receiving from the user interface, one or more types of possession input (indicating the player in possession of the primary object of play) related to a plurality of events of the sports contest. Amended claim 21 is amended so the computer is programmed for interpreting the possession input from the user interface and determining an event based **solely** on the possession inputs. The computer is further programmed for receiving from the user interface, one or more types of event input related to a plurality of events of the sports contest and interpreting the event input from the user interface. The computer is further programmed for storing data representative of the events based on possession input and the events based on event inputs in the database.

Applicant respectfully asserts that amended claim 21 includes elements not present in the Descalzi patent, and therefore, is not anticipated by that patent. In particular, Applicant asserts that the element of amended claim 21b, interpreting said possession input from said user interface and determining an event based **solely** on said possession input, is not present, or even suggested by, Descalzi. The cited reference requires inputting possession inputs *and* event inputs to determine a game event as seen in column 5, lines 8 – 11 of Descalzi:

Actions or statistics are recorded during a game by moving the cursor on the LCD to a player row using the arrow keys in the left vertical group 17, and pressing the applicable action key in vertical group 18.

Also, at column 3, lines 55-60:

[T]he keys of group 17 are utilized to select players and/or teams, the keys of group 18 record "actions" or game events, such as field goals, rebounds, and turnovers and the keys of group 19 support additional operational features to include both recording statistics and data manipulation.

According to Fig. 1 of the reference, other events directly entered from the keys of group 18 include defensive rebound (DR), offensive rebound (OR), turnover (TO), steal (ST), assist (AS) and blocked shot (BL).

Addressing the Office Actions of March 5 and May 9, 2008, the Examiner argues that the element of claim 21, step b, interpreting said possession input from said user interface and determining an event based on said possession input is anticipated by Descalzi's determining an updated statistics, percentage statistics, and cumulative statistics based on the possession input. ( col.4:61-5-7).

The present invention defines possession input as indicating the player in possession of the primary object of play. "Each time a new player takes possession of the ball, the user selects the new player." (specification page 12, lines 4 – 5). Game events or events are defined as pass, turnover, or steal (specification, page 12 line 20 -21), and do not include statistics which are discussed starting on page 16 of the specification. Therefore, according to original claim 21, step b, the present invention determines events based on inputs indicating the player in possession of the primary object of play. In comparison, the cited passage of Descalzi, (col 4, li 61 - col 5, li 7) states:

FIG. 5, the Game Shot Screen, follows the tabular format used in the Game Stats Screen of FIG. 4. However, category columns are changed to player uniform number ("NO"); player name ("NAME"); made field goals ("M"); attempted field goals ("A"); field goal percentage ("FG %"); made three-point field goals ("3M"); attempted three-point field goals ("3A"); three-point field goal percentage ("3P %"); made free throws ("FM"); attempted free throws ("FA"); and free throw percentage ("FT %"). All percentage fields are automatically computed from user input of other fields. Like the Game Stats Screen in FIG. 4, cumulative statistics are shown at the bottom of the Game Shot Screen and are updated in real-time. Game clock, time outs, and possession arrow are also shown.

The cited passage references automatically computing statistics from user input of events. This is very different than original or amended claim 21, step b which claims

determining game events (not statistics) from possession inputs (not events). For the foregoing reasons, amended claim 21 is believed to be patentably distinguishable over Descalzi and allowable.

Newly added claim 37 describes a system for real-time tracking and recording events of a sports contest with a primary object of play. The sports contest includes offensive and defensive competitive interaction between at least a first team and a second team in opposition therewith, with each team having at least one player associated therewith. The system includes at least one computer including a processor portion and a user interface portion including a display. The computer is interactively operable with a user under control of a computer program associated with the processor. The system also includes a computerized database accessible through the computer program. The database includes information related to the at least first and second teams, the respective players associated therewith, and the events of the sports contest. The computer program is operable for receiving and interpreting inputs related to a plurality of events of the sports contest from the user interface. The inputs include possession inputs indicating the player in possession of the primary object of play, event inputs, and officiating inputs at step a. In step b, the system responsively determines an event based on successive possession inputs without an intervening event input or officiating input. For example, a possession input followed by a possession input indicating a player from the same team, and no intervening event or officiating input (such as a shot or a whistle) is entered; the system interprets the successive possession inputs and determines the event “pass” has occurred (Fig. 8 and specification page 12, lines 13 – 18). This distinguishes the present invention from the device in the reference because Descalzi discloses determination of events based on entry of possession inputs and requires the corresponding event input entry. Descalzi does not disclose, or even suggest, determination of a game event based on successive possession inputs without an intervening event input or officiating input.

Claim 37, step c describes the feature of responsively determining an event based on the possession input and a different event input or officiating input. For example, the event “shot” is input followed by a possession input; the system interprets the inputs and determines the event “rebound” for the player indicated by the possession input (Fig. 10A and specification page 13, lines 8 - 10). This distinguishes the present invention from the

device in the reference because Descalzi does not disclose, or even suggest, determination of an event based on entry of a different event followed by a possession entry.

Claim 37 step e points out the feature of interactively prompting the user responsive to the officiating input, for additional input and determining an event based on the officiating input and the additional input. For example, after a whistle is indicated, the system provides prompts for additional input to determine the event associated with the whistle. (Figs. 11 and 12, specification page 14, lines 1 – 4) This feature is not present in the Descalzi reference. For the foregoing reasons, newly added claim 37 is believed to be patentably distinguishable over Descalzi and allowable.

Claim 38 identifies a game status that is determined by previous possession, event and officiating inputs. Based on the game status, the interpretation and determination effected in accordance with step b is effected based only upon the status and the possession input entered in step a. For example, based on previous event and possession inputs, the system identifies the game status as “a foul has been called and no free throws are required”; the next possession input is interpreted and the system determines the event “inbounding the ball” by the player indicated by the possession input (Fig. 14A and specification page 15, lines 2 – 6). This claim distinguishes the present invention from the device in the reference because Descalzi does not disclose, or even suggest, determination of events based on the game status and only the use of possession inputs. For the foregoing reasons, newly added claim 38, which further limits claim 37 is believed to be patentably distinguishable over Descalzi and allowable.

Claims 23 and 25, as amended, are directed to a system and method, respectively, for tracking and recording events of a fast paced or timed sports contest in real-time. The sports contest includes a primary object of play and offensive and defensive competitive interaction between at least a first team and a second team in opposition therewith, and each team having at least one player. The system and method include at least one computer user interface including a processor portion, a display portion, and an information entry portion. The computer user interface is interactively operable with a user under control of a computer program. The system and method further include a computerized database accessible through the computer program and the computer user

interface. The computer program includes a game module for translating a series of user inputs into a series of sports contest events. The computer user interface is operable in accordance with the game module for accepting from the user at least one entry representative of information related to a plurality of events of the sports contest. The at least one entry representative of information includes an officiating indication, a player in possession of the primary object of play, or an event.

The computer program claimed in claims 23 and 25 is operable at step 1 for interactively responding to the at least one entry of the user and communicating therewith to establish a particular event by deducing the particular event based solely on a series of entries representative of the player in possession of the primary object of play. Descalzi does not disclose, or event suggest, establishing an event by deducing that event solely on a series of entries representative of the player in possession of the primary object of play. Descalzi requires entering each game event directly. At step 2, the computer program is operable for deducing the particular event based on at least one entry representative of the player in possession of the primary object of play and a different event. Descalzi does not disclose, or event suggest, establishing an event based on entry of the player in possession of the primary object of play and a different event. Descalzi requires entering each game event directly. At step 3, the computer is further programmed to interactively elicit and respond to additional entries representative of information related to the plurality of events from the user by displaying, for selection by the user, additional choices based on the at least one entry until the particular event is determined. Descalzi does not disclose, or event suggest, this capability. At step 4, the computer is operable for recognizing the at least one entry as the particular event. Finally, the system or method displays the particular event for verification by the user and stores the particular event in the database.

By way of example, claims 23 and 25, as amended, claim a system and method that, at step 1, deduces the particular event based on a series of entries representative of the player in possession of the primary object of play. A series of possession inputs results in deduction of a particular event such as "pass", "steal" or "turnover" by the system (Fig. 8). At step 2, they deduce the particular event based on at least one entry representative of the player in possession of the primary object of play and a different

event. The particular event “assist” is deduced based on a possession input prior to a different event “shot”, or the particular event “rebound” is deduced based on a possession input following a different event “shot” (Fig.10A). The Descalzi reference does not disclose deducing a particular event from a series of possession inputs alone, or from a possession input in combination with a different event input as described above for the present invention. For the foregoing reasons, amended claims 23 and 25 are believed to be patently distinguishable from the Descalzi reference and allowable.

Turning to the obviousness rejection of claims 26, 33, and the dependent claims thereof, Applicant respectfully suggests that because Descalzi does not disclose, or even suggest, elements of the present invention, specifically tracking the possession of the primary object of play to determine game events.

As required by the Supreme Court in Graham v. John Deere, 383 U.S. 1, 148 USPQ 459 (1966), when determining obviousness under § 103, the following factors must be considered:

- (A) Determining the scope and contents of the prior art;
- (B) Ascertaining the differences between the prior art and the claims in issue;
- (C) Resolving the level of ordinary skill in the pertinent art; and
- (D) Evaluating evidence of secondary considerations. (MPEP § 2141 (I)).

As set forth in MPEP § 2141 (II), when applying 35 U.S.C. § 103, the following tenets of patent law must be adhered to:

- (A) The claimed invention must be considered as a whole;
- (B) The references must be considered as a whole and must suggest the desirability and thus the obviousness of making the combination;
- (C) The references must be viewed without the benefit of impermissible hindsight vision afforded by the claimed invention; and
- (D) Reasonable expectations of success is the standard with which obviousness is determined. Hodosh v. Block Drug Co., 786 F.2d 1136, 1143 n.5, 229 USPQ 182, 187 n. 5 (Fed. Cir. 1986).

Further, [t]he key to supporting any rejection under 36 U.S.C. 103 is the clear articulation of the reason(s) why the claimed invention would have been obviousness. The Supreme Court in KSR International v. Teleflex Inc., 550 U.S. \_\_\_, \_\_\_, 82 USPQ 1385, 1396 (2007) noted that the analysis supporting a rejection under 35 U.S.C. 103 should be made explicit. The Federal Circuit has stated that “rejections on obviousness



cannot be sustained with mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness.” In re Kahn, 441 F3d. 977, 988, 78 USPQ2d 1329, 1336 (Fed. Cir. 2006). See also, KSR, 550 U.S. at \_\_\_\_, 82 USPQ at 1396 (quoting Federal Circuit statement with approval).

Claims 26 – 36 were rejected under 35 USC 103(a) as an obvious modification of the Descalzi device. The Examiner states,

The apparatus comprises a plurality of inputs for inputting play events as it occurs (col.2:55-60). . . . The [Descalzi] game apparatus is programmed to interpret player's inputs as game event information. There are only a finite number of ways in which an apparatus can be programmed to interpret player's inputs. One can program an apparatus to recognize an event upon a single button, or one can program an apparatus to recognize an event upon numerous buttons. A person of ordinary skill of the art would have recognized the desirability of Descalzi, and have the system for real-time tracking and recording of a team sports contest recognize certain events without the necessity of inputting the [sic] all the separate events.

Applicant respectfully asserts that the stated grounds for rejection evidence that the scope and contents of the prior art have not been fully and accurately determined by the Examiner and as a consequence, the Examiner has failed to articulate reasoning with some rational underpinning to support the legal conclusion of obviousness. The Examiner fails to acknowledge that Descalzi is unable to deduce or determine a game event from any input other than that game event, itself. The present invention is not just a cleverly programmed version of Descalzi that would have been obvious to a person of ordinary skill in the art. Possession tracking, as claimed in the present invention, identifies and overcomes a shortcoming in the historically accepted event tracking used in gathering statistics related to sports contest. Even if a person of ordinary skill in the art sought to modify Descalzi to require fewer inputs to determine events, there is no suggestion in Descalzi of how to make the modification. Descalzi implements the historically accepted event tracking method of gathering data. There is no indication that Descalzi even recognizes the shortcomings of event tracking, no suggestion to try a new approach, such as possession tracking, and no indication that possession tracking would overcome the shortcomings of event tracking.

Because of real-time possession tracking is used to make game event determinations, the present invention can provide statistical analysis of the game that previously was overly labor intensive to attain or simply unattainable from known systems such as Descalzi. Such statistics include the amount of time a player had possession of the ball (Fig. 16C, specification page 16, lines 19 – 20, and page 17, lines 3 – 6), the event or action associated with each player's possession of the ball, and the passing history among and between the players (Fig. 17C and specification page 17, line 17 – page 18, line 2). Additional user defined reports may also be created from the possession tracking information.

Applicants provide herewith, declarations from inventor Stuart Neale; Hamline University Director of Athletics Bob Beeman; NBA World Champion and Coach of the Qatar National Basketball Team Cliff Livingston; and Marquette University Associate Athletics Director Craig Pintens. Each of these declarations describes the ball possession tracking feature of the present invention that allows gathering information that was previously unavailable. Clearly the present invention does more than provide a predictable time savings. In these declarations, the invention is referenced as JoeTrac.

In the Advisory Action, the Examiner states that none of the declarations address the issue of why the specific method of inputting data a certain was to be recorded as certain events is not obvious. Applicant's attorney respectfully asserts that the declarations indicate that the present invention provides unexpected results and a solution for long-felt but unsolved needs.

The declarants agree that possession tracking or inputting data according to the invention (i.e. inputting the player in possession of the object of play), produces useful, unexpected results. Utilizing a lesser number of inputs to determine an event would expectedly result in a reduced workload on the statistician. Possession tracking, however, as utilized in the present invention, not only results in a reduced workload on the statistician, it also provides additional unexpected results which include real time data and statistics related to individual players and combinations of players unavailable in the prior art. Mr. Neale declares that the result of the manner in which the data is input (possession tracking) provides "unique stats, like the amount of time each player held the ball, to whom each player passed the ball, and what each player did with the ball," in real

time. Mr. Beeman declares that the result of the manner in which the data is input, described as possession tracking, provides “unique statistics” that are “easier to take, immediately available and included more information than we have ever had before.” Mr. Pintens declares that, “The amount of reports JoeTrac outputs is second to none, based on its unique possession tracking dimension.” Further he states that because the present invention “actually tracks each pass made by a player,” it produces statistics beyond the capability of present methods, such as player “time of possession, who the player passed to and what the result of each time the player touched the ball.” Mr. Levingston declares that he uses the present invention because “possession based tracking” provided information and “unique statistical capabilities” in real time. Because of possession based tracking, he is able to get unique information about each individual player, and about the “5 man groups that played in the game.”

The declarants agree that the result of the manner in which the data is input, described as possession tracking, provides a solution to a long-felt need. In any team sport, data and statistics regarding individual team members and various groupings of team members is critical. For this reason, coaches have historically watched hours of game tapes, and sometimes utilized numerous statisticians during a game, to gather data and compile statistics for their own players and combination of players, as well as players and combinations of players for opposing teams. Recording this data by event tracking according to the prior art is very labor intensive, thus, data gathered by this method is only useful for developing a strategy or game plan for future games. Real time data and statistics related to the performance of players and combinations of players, on both teams, during a game would be considerably more useful, allowing coaches to modify or tweak their game plan to maximize the team's effectiveness based on the real time performance of the players and combinations of players. Unfortunately that option has not been available to coaches using event tracking according to the prior art. Possession tracking, as used in the present invention, produces data and statistics related to players and combinations of players in a directly usable format in real time. Mr. Levingston declares that using traditional event based statistics, “it would take 8 or 10 statisticians to log every touch for every player in a game,” but with “possession based tracking, [we] can easily compile the statistics with two statisticians.” He continued, “Because the

information was available in real time we were able to use the information at half time and even during the game.” Mr. Livingston believes his coaching skills have improved as a result of using the possession tracking of the present invention because it allowed him to see “the best and the most productive combinations on the floor in pre-game preparation as well as during the game at any given time” and make changes accordingly. Therefore, inputting data using the possession tracking method of the present invention provides both unexpected results and a solution to a long-felt need according to the statements of the declarants.

With the above amendments to the claims, and the arguments traversing the obviousness rejections, all the claims are believed to contain elements that patently distinguish them over the cited prior art. Specifically, Applicant believes independent claims 21, 23, 25, 26, 33 and 37 and the dependent claims thereof are now in condition for allowance. If the Examiner has any questions or comments, Applicant’s attorney would appreciate a telephone call at the number indicated below.

Authorization is hereby provide to charge any underpayment of fees or any additional fees due with respect hereto to our Deposit Account No. 08-1280.

Respectfully submitted,

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